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SENATE BILL 168

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Phil A. Griego

AN ACT

RELATING TO TELECOMMUNICATIONS; EQUALIZING INTRASTATE AND INTERSTATE SWITCHED ACCESS RATES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 63-9A-8.2 NMSA 1978 (being Laws 2000, Chapter 100, Section 4 and Laws 2000, Chapter 102, Section 4, as amended) is amended to read:

"63-9A-8.2. IDENTIFYING SUBSIDIES-- RULES-- PRICE CAPS. --

A. No later than December 31, 2000, the commission shall review existing rates for public telecommunications services offered by incumbent local exchange carriers with more than fifty thousand access lines and identify all subsidies that are included in the rates. The commission shall issue rules requiring that the identified subsidies appear on customer bills and establish a schedule not later than April 1,

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1 2001 whereby implicit subsidies be eliminated through  
2 implementation of the state [~~rural universal service~~]  
3 telecommunications access reform fund or through revenue-  
4 neutral rate rebalancing or any other method consistent with  
5 the intent of the New Mexico Telecommunications Act.

6 B. No later than January 1, 2001, the commission  
7 shall adopt rules that:

8 (1) establish consumer protection and quality-  
9 of-service standards;

10 (2) ensure adequate investment in the  
11 telecommunications infrastructure in both urban and rural areas  
12 of the state;

13 (3) promote availability and deployment of  
14 high-speed data services in both urban and rural areas of the  
15 state;

16 (4) ensure the accessibility of  
17 interconnection by competitive local exchange carriers in both  
18 urban and rural areas of the state; and

19 (5) establish an expedited regulatory process  
20 for considering matters related to telecommunications services  
21 that are pending before the commission.

22 C. No later than April 1, 2001, but in no case  
23 prior to the adoption of the rules required in Subsection B of  
24 this section, the commission shall eliminate rate of return  
25 regulation of incumbent telecommunications carriers with more

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1 than fifty thousand access lines and implement an alternative  
2 form of regulation that includes reasonable price caps for  
3 basic residence and business local exchange services.

4 D. Rules adopted pursuant to this section shall not  
5 be applied to incumbent rural telecommunications carriers as  
6 that term is defined in Subsection I of Section 63-9H-3 NMSA  
7 1978. "

8 Section 2. Section 63-9H-3 NMSA 1978 (being Laws 1999,  
9 Chapter 295, Section 3) is amended to read:

10 "63-9H-3. DEFINITIONS. -- As used in the Rural  
11 Telecommunications Act of New Mexico:

12 A. "affordable rates" means rates for basic service  
13 that promote universal service within a local exchange service  
14 area, giving consideration to the economic conditions and costs  
15 to provide service in the area in which service is provided;

16 B. "basic service" means service that is provided  
17 to a rural end-user customer that is consistent with the  
18 federal act;

19 C. "cable service" means the transmission to  
20 subscribers of video programming or other programming service  
21 and subscriber interaction, if any, that is required for the  
22 selection or use of the video programming or other programming  
23 service;

24 D. "commission" means the public regulation  
25 commi ssi on;

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1 E. "eligible telecommunications carrier" means an  
2 eligible telecommunications carrier as defined in the federal  
3 act;

4 F. "federal act" means the federal  
5 Telecommunications Act of 1996;

6 G. "fund" means the state [~~rural universal service~~]  
7 telecommunications access reform fund;

8 H. "incumbent local exchange carrier" means a  
9 person that:

10 (1) was designated as an eligible  
11 telecommunications carrier by the state corporation commission  
12 in Docket #97-93-TC by order dated October 23, 1997, or that  
13 provided local exchange service in this state on February 8,  
14 1996; or

15 (2) became a successor or assignee of an  
16 incumbent local exchange carrier;

17 I. "incumbent rural telecommunications carrier"  
18 means a local exchange carrier that serves fewer than fifty  
19 thousand access lines within the state and was designated as an  
20 eligible telecommunications carrier by the state corporation  
21 commission on or before November 1, 1997, including any  
22 successor in interest thereto;

23 J. "local exchange area" means a geographic area  
24 encompassing one or more local communities, as described in  
25 maps, tariffs or rate schedules filed with the commission,

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1 where local exchange rates apply;

2 K. "local exchange service" means the transmission  
3 of two-way interactive switched voice communications furnished  
4 by a telecommunications carrier within a local exchange area;

5 L. "long distance service" means telecommunications  
6 service between local exchange areas that originate and  
7 terminate within the state;

8 M. "private telecommunications service" means a  
9 system, including its construction, maintenance or operation  
10 for the provision of telecommunications service, or any portion  
11 of that service, by a person for the sole and exclusive use of  
12 that person and not for resale, directly or indirectly. For  
13 purposes of this definition, the person that may use the  
14 service includes any affiliates of the person if at least  
15 eighty percent of the assets or voting stock of the affiliates  
16 is owned by the person. If any other person uses the  
17 telecommunications service, whether for hire or not, the  
18 private telecommunications service is a public  
19 telecommunications service;

20 N. "public telecommunications service" means the  
21 transmission of signs, signals, writings, images, sounds,  
22 messages, data or other information of any nature by wire,  
23 radio, lightwaves or other electromagnetic means originating  
24 and terminating in this state regardless of actual call  
25 routing. "Public telecommunications service" does not include

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1 the provision of terminal equipment used to originate or  
2 terminate the service; private telecommunications service;  
3 broadcast transmissions by radio, television and satellite  
4 broadcast stations regulated by the federal communications  
5 commission; radio common carrier services, including mobile  
6 telephone service and radio paging; or cable service; and

7 0. "telecommunications carrier" means a person that  
8 provides public telecommunications service. "

9 Section 3. Section 63-9H-6 NMSA 1978 (being Laws 1999,  
10 Chapter 295, Section 6) is amended to read:

11 "63-9H-6. STATE [~~RURAL UNIVERSAL SERVICE~~]  
12 TELECOMMUNICATIONS ACCESS REFORM FUND- - ESTABLISHMENT [~~BOARD~~]. - -

13 A. No later than January 1, [~~2000~~] 2005, the  
14 commission shall implement a "state [~~rural universal service~~]  
15 telecommunications access reform fund" to [~~maintain and support~~  
16 ~~at affordable rates those public telecommunications services as~~  
17 ~~are determined by the commission~~] enable residents of New  
18 Mexico to have equitable access to competitive long distance  
19 markets and pricing through intrastate access reform. Toward  
20 this goal, this section mandates that intrastate switched  
21 access charges to providers of intrastate long distance service  
22 shall be reduced to levels that are comparable to interstate  
23 switched access rates. All of the balances in the existing New  
24 Mexico universal service fund as of July 1, [~~1999~~] 2004 shall  
25 be transferred into the state [~~rural universal service~~]

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1 telecommunications access reform fund.

2           B. The fund shall be financed by a surcharge on all  
3 intrastate retail public telecommunications services revenue,  
4 excluding revenue from services provided pursuant to a low-  
5 income telephone assistance plan billed to end-user customers  
6 by a telecommunications carrier, and excluding from revenue all  
7 amounts from surcharges, gross receipts taxes, excise taxes,  
8 franchise fees and similar charges. For the purpose of funding  
9 the fund, the commission [~~has the authority to~~] shall apply the  
10 surcharge on all intrastate retail public telecommunications  
11 services provided by telecommunications carriers and to  
12 comparable retail alternative services provided by  
13 telecommunications carriers and non-telecommunications carriers  
14 to the extent not prohibited by federal law, including  
15 commercial mobile radio services, operator services and  
16 aggregator services, offered by providers other than  
17 telecommunications carriers, at a competitively and  
18 technologically neutral rate or rates to be determined by the  
19 commission. In prescribing competitively and technologically  
20 neutral surcharge rates, the commission may make distinctions  
21 between services subject to a surcharge, but it shall require  
22 telecommunications carriers and non-telecommunications carriers  
23 to apply uniform surcharge rates for the same or comparable  
24 services. Money deposited in the fund is not public money, and  
25 the administration of the fund is not subject to the provisions

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1 of law regulating public funds. The commission shall not apply  
2 surcharges to a private telecommunications network.

3 C. The fund shall [~~be competitively and~~  
4 ~~technologically neutral, equitable and nondiscriminatory in its~~  
5 ~~collection and distribution of funds, portable between eligible~~  
6 ~~telecommunications carriers, targeted to high-cost rural areas,~~  
7 ~~and additionally shall]~~ provide a specific, predictable and  
8 sufficient support mechanism as determined by the commission  
9 that reduces [~~implicit subsidies, including~~] intrastate  
10 switched access charges [~~and ensures universal service in the~~  
11 ~~state]~~ to interstate switched access charge levels in a  
12 revenue-neutral manner.

13 D. The commission shall:

14 (1) establish eligibility criteria for  
15 participation in the fund [~~consistent with federal law~~] that  
16 ensure the availability of service at affordable rates without  
17 unreasonably increasing rates for basic service [~~while still~~  
18 ~~granting eligible telecommunications carriers a reasonable~~  
19 ~~profit on supported services in geographic areas requiring~~  
20 ~~support from the fund, but the eligibility criteria shall not~~  
21 ~~require any investigations of the costs or rates of a~~  
22 ~~telecommunications carrier receiving support from the fund~~  
23 ~~other than that provided for in Subsection E of this section.~~  
24 ~~The eligibility criteria shall not restrict or limit an~~  
25 ~~eligible telecommunications carrier from receiving federal~~

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1 ~~universal service support~~];

2 (2) establish a benchmark rate for basic  
3 services that shall be utilized in determining affordability of  
4 basic services and level of support from the fund;

5 [~~(2)~~] (3) provide for the collection of the  
6 surcharge on a competitively neutral basis and for the  
7 administration and disbursement of money from the fund; and

8 [~~(3)~~—~~determine those geographic areas and local~~  
9 ~~exchange services requiring support from the fund; and~~

10 [~~(4)~~—~~provide for the separate administration and~~  
11 ~~disbursement of federal universal service funds consistent with~~  
12 ~~federal law~~]

13 (4) allow telecommunications companies that  
14 reduce switched access charges to increase rates for basic  
15 services in order to implement the revenue-neutral switched  
16 access price reductions.

17 E. The commission shall adopt rules for the  
18 implementation and administration of the fund in accordance  
19 with the provisions of this section [~~The cost basis for~~  
20 ~~establishing the fund and determining the rate of distribution~~  
21 ~~of the fund for areas served by an incumbent rural~~  
22 ~~telecommunications carrier shall be the same cost of and shall~~  
23 ~~be consistent with the federal support mechanisms for providing~~  
24 ~~the supported service by geographic area, determined by the~~  
25 ~~federal communications commission. The cost basis established~~

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1 ~~by the commission for areas served by incumbent rural~~  
2 ~~telecommunications carriers shall include the same return~~  
3 ~~authorized by the federal communications commission for use in~~  
4 ~~rates filed by the national exchange carriers association, or~~  
5 ~~its successor, at the federal communications commission for~~  
6 ~~member carriers. The revenue basis for rural~~  
7 ~~telecommunications carriers with fewer than fifty thousand~~  
8 ~~access lines shall include only revenues from public~~  
9 ~~telecommunications services provided by the eligible~~  
10 ~~telecommunications carrier] and variances requested by carriers~~  
11 for good cause shown.

12 F. The commission shall, upon implementation of the  
13 fund, select a neutral third party administrator to collect,  
14 administer and disburse money from the fund under the  
15 supervision and control of the commission pursuant to  
16 established criteria and rules promulgated by the commission.  
17 The administrator may be reasonably compensated for the  
18 specified services from the surcharge proceeds to be received  
19 by the fund pursuant to Subsection B of this section. [The  
20 administrator shall consult with an advisory board established  
21 by the commission composed of representatives from all  
22 participating providers and the attorney general or one other  
23 customer representative, provided that the total number of  
24 individual representatives on the advisory board shall not  
25 exceed thirteen.] For purposes of this subsection, the

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1 commission shall not be a neutral third party administrator.

2 G. ~~[The fund established by the commission shall~~  
3 ~~ensure the availability of local exchange service as determined~~  
4 ~~by the commission at affordable rates in rural high cost areas~~  
5 ~~of the state.]~~ Beginning January 1, 2005, the commission shall  
6 commence the phase-in of reductions in intrastate switched  
7 access charges. By February 1, 2007, the commission shall  
8 ensure that intrastate switched access charges are equal to  
9 interstate switched access charges established by the federal  
10 communications commission as of January 1, 2004. Nothing in  
11 this section shall preclude the commission from considering  
12 further adjustments to intrastate switched access charges based  
13 on changes to interstate switched access charges after February  
14 1, 2007.

15 H. To ensure that providers of intrastate [~~long~~  
16 ~~distance~~] retail telecommunications service contribute to the  
17 fund and to further ensure that the surcharge to be paid by the  
18 end-user customer will be held to a minimum, [~~no later than~~  
19 ~~December 31, 1999~~] the commission shall adopt rules, or take  
20 other appropriate action, to require all such providers to  
21 participate in a plan to ensure accurate reporting of  
22 intrastate retail [~~long distance~~] telecommunications revenues.

23 I. ~~[Upon commission action to replace implicit~~  
24 ~~subsidies with explicit subsidies]~~ The commission shall [~~reduce~~  
25 ~~in a revenue neutral basis rates for intrastate~~

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1 ~~telecommunications services, other than basic local exchange~~  
2 ~~service, excluding rates affected by the low-income telephone~~  
3 ~~assistance program, in an amount equal to payments received by~~  
4 ~~a rural telecommunications carrier from the fund. Any]~~  
5 authorize payments from the fund to eligible carriers, in  
6 combination with revenue-neutral rate rebalancing up to the  
7 benchmark rate, in an amount equal to the reduction in revenue  
8 that occurs as a result of reduced intrastate switched access  
9 charges. Reductions in charges for access services resulting  
10 from compliance with this section shall be passed ~~[on]~~ through  
11 for the benefit of consumers in New Mexico.

12 J. By December 1, 2007, telecommunications carriers  
13 and the commission shall submit a joint report to the  
14 legislature. The report shall include the effects of access  
15 reductions and make recommendations for any changes to the  
16 structure, size or purposes of the fund."

17 Section 4. Section 63-9H-7 NMSA 1978 (being Laws 1999,  
18 Chapter 295, Section 7) is amended to read:

19 "63-9H-7. REGULATION OF RETAIL RATES OF INCUMBENT RURAL  
20 TELECOMMUNICATIONS CARRIER. --

21 A. Rates for retail rural public telecommunications  
22 services provided by an incumbent rural telecommunications  
23 carrier shall be subject to regulation by the commission only  
24 in the manner and to the extent authorized by this section.

25 B. An incumbent rural telecommunications carrier

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1 shall file tariffs for all retail public telecommunications  
2 services, other than residential local exchange service, which  
3 shall be effective after ten days' notice to the commission and  
4 publication in a local newspaper in the incumbent service area.  
5 An incumbent rural telecommunications carrier shall remain  
6 subject to complaint by an interested party subject to Section  
7 [~~10 of the Rural Telecommunications Act of New Mexico~~] 63-9H-10  
8 NMSA 1978.

9 C. Rates for residential local exchange service may  
10 be increased by an incumbent rural telecommunications carrier  
11 only after sixty days' notice to all affected subscribers. The  
12 notice of increase shall include:

- 13 (1) the reasons for the rate increase;
- 14 (2) a description of the affected service;
- 15 (3) an explanation of the right of the  
16 subscriber to petition the commission for a public hearing on  
17 the rate increase;
- 18 (4) a list of local exchange areas that are  
19 affected by the proposed rate increase; and
- 20 (5) the dates, times and places for the public  
21 informational meetings required by this section.

22 D. An incumbent rural telecommunications carrier may  
23 increase its rates for residential local exchange service in  
24 the manner otherwise provided in this section as necessary to  
25 recover a reasonable allocation of costs incurred due to

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1 requirements imposed by any federal or state law or rule. An  
2 incumbent rural telecommunications carrier that proposes to  
3 increase its rates for residential local exchange service shall  
4 hold at least one public informational meeting in each public  
5 regulation commissioner's district as established by the Public  
6 Regulation Commission Apportionment Act in which there is a  
7 local exchange area affected by the rate change.

8 E. Residential local exchange service rates increased  
9 by a rural telecommunications carrier pursuant to Subsection D  
10 of this section shall be reviewed by the commission only upon  
11 written protest signed by two and one-half percent of all  
12 affected subscribers or upon the commission staff's own motion  
13 for good cause. The protest shall specifically set forth the  
14 particular rate or charge as to which review is requested, the  
15 reasons for the requested review and the relief that the  
16 persons protesting desire. If a proper protest is presented to  
17 the commission within sixty days from the date notice of the  
18 rate change was sent to affected subscribers of an incumbent  
19 rural telecommunications carrier, the commission may accept and  
20 file the complaint and, upon proper notice, may suspend the  
21 rates at issue during the pendency of the proceedings and  
22 reinstate the rates previously in effect and shall hold and  
23 complete a hearing thereon within ninety days after filing to  
24 determine if the rates as proposed are fair, just and  
25 reasonable. The commission may, within sixty days after close

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1 of the hearing, enter an order adjusting the rates at issue,  
2 except that the commission shall not set any rate below the  
3 intrastate cost of providing the service [~~that will include~~  
4 ~~cost and rate of return in accordance with Subsection E of~~  
5 ~~Section 6 of the Rural Telecommunications Act of New Mexico~~].  
6 The cost basis established by the commission for areas served  
7 by incumbent rural telecommunications carriers shall include  
8 the same return authorized by the federal communications  
9 commission for use in rates filed by the national exchange  
10 carriers association, or its successor, at the federal  
11 communications commission for member carriers. The revenue  
12 basis for rural telecommunications carriers with fewer than  
13 fifty thousand access lines shall include only revenues from  
14 public telecommunications services provided by the eligible  
15 telecommunications carrier. In the order, the commission may  
16 order a refund of amounts collected in excess of the rates and  
17 charges as approved at the hearing, which may be paid as a  
18 credit against billings for future services. If the complaint  
19 is denied, the commission shall enter an order denying the  
20 complaint within sixty days after the close of the hearing, and  
21 the rates shall be deemed approved. For purposes of this  
22 section, cost shall also include a reasonable amount of joint  
23 and common costs incurred by the telecommunications carrier in  
24 its operations and may include other accounting adjustments  
25 authorized by the commission.

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1           F. A rural telecommunications carrier that serves  
2 less than five percent of the state's aggregate statewide  
3 subscriber lines may at any time elect to file an application  
4 with the commission requesting the commission to prescribe  
5 fair, just and reasonable rates for the carrier based on the  
6 carrier's revenue, expenses and investment in accordance with  
7 traditional rate-making principles.

8           G. Rates for local exchange, vertical and long  
9 distance service to retail end-user customers may be reduced to  
10 a level equal to, but not below, the intrastate cost, which  
11 shall include cost and rate of return pursuant to Subsection E  
12 of this section [~~6 of the Rural Telecommunications Act of New~~  
13 ~~Mexico~~]. If an incumbent rural telecommunications carrier  
14 loses its exemption pursuant to Section 251 of the federal act,  
15 the rate for a service, excluding basic service, must cover the  
16 cost of the service, including the imputed rate of wholesale  
17 service elements as may be required by the commission. The  
18 cost of long distance service must also include any  
19 interexchange access rates charged to another  
20 telecommunications carrier for the service.

21           H. An incumbent rural telecommunications carrier  
22 operating pursuant to this section shall have the ability to  
23 offer or discontinue offering special incentives, discounts,  
24 packaged offerings, temporary rate waivers or other promotions,  
25 or to offer individual contracts. "